IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.289 OF 2007
WITH
CIVIL APPLICATION NO.1080 OF 2007

Shri Deoram Hari Undre(deceased) & Ors. ..Appellants.

V/s.

Sou. Pushpabai Dattu Shinde & Anr. ..Respondents.

Mr.V.G.Mujumdar for appellants.

Mr.Anil Subramaniam for Respondent Nos. 1 and 2.

CORAM: A.M.KHANWILKAR,J

DATE : AUGUST 30, 2007.

P.C. :

1. While issuing notice in this appeal, in my Order dated 18th July, 2007, I have reproduced the contention of the Appellants, in particular in paragraph-4, on which notice was issued.

2. Counsel for the Respondents/Plaintiffs however, relying on the averments in the Written Statement of the Appellants would contend that the issue regarding ownership of the suit property was disputed by the Appellants by asserting that there was no brother of Narayan Hari Undre by name of Yamaji. It is also asserted in the Written Statement that the Suit property was never treated as ancestral

property or Joint family property. In the context of the said contention, the trial Court framed issue No.1 as to whether plaintiffs have proved that Yamaji Hari Undre was the owner of the suit properties. The trial Court on analysing the evidence on record has answered the said issue in favour of the Plaintiffs.

3. Although the correctness of the said finding appears to have been assailed in the memo of appeal filed before the first Appellate Court, however, from the Judgment of the Appellate Court it appears that the only contention raised before the Appellate Court was whether the Plaintiffs have established that they were the legal heirs of the deceased Yamaji. That issue has been answered by the Appellate Court on analysis of the record.

4. In the present memo of appeal, no grievance is made that the Appellant had argued before the first Appellate Court that the finding recorded by the trial Court on Issue No.1 was incorrect or manifestly wrong and inspite of said contention raised before the Appellate Court, the Appellate Court has not dealt with the said plea. No such grievance is found in the memo of appeal filed in this Court. It is well established that the

observations or the facts stated in the Order of the Court will have to be accepted as it is. The correctness of the facts so reproduced in the Judgment can be put in issue only before the same Court **(see AIR 1982 SC 1249 R.S.Nayak V/s. A.R.Antulay).** In that sense, it is not open to the Appellant to raise contention which is not supported by the facts reproduced in the Judgment under appeal. Suffice it to observe that as the finding on issue No.1 recorded by the trial Court has remained unassailed before the Appellate Court and for that reason the dismissal of the appeal and confirmation of the decree passed by the trial Court was inevitable. In the circumstances, this appeal is devoid of merits. No substantial question of law arises for consideration.

5. At this stage, counsel for the Appellant submits that the first Appellate Court has not considered application filed on behalf of the Appellants under Order 41 Rule 27 of C.P.C. for permission to adduce additional evidence. Assuming that there is substance in this grievance, the fact remains that the appellants have not challenged the finding recorded by the trial Court on Issue No.1. The only contention raised before the Appellate Court

was whether the Plaintiffs were legal representatives and heirs of Yamaji which again has been answered by the Appellate Court on its own merits. Additional evidence which the Appellant wanted to produce would have no effect on the correctness of the finding on the said aspect.

6. As aforesaid, no substantial question of law arises for consideration. Hence, dismissed.

7. In view of the dismissal of the appeal, nothing survives in the Civil Application. The same is disposed of accordingly.

(A.M.KHANWILKAR,J)